

Single Bench

(1)
(64)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL No. 829 / 2012

Appellant

:

Uttam S/o Anjor Singh,

(In Jail)

Aged about 19 years, R/o Village -

Tundri, P.S. Bilaigarh, District -

Baloda Bazar-(C.G.)

829/12
A.D. K. Deep
21/9/12
B. No.
Presented by Shri.
dated.

Versus

Respondent

:

State of Chhattisgarh

Through : P.S - Bilaigarh,

Distt. Baloda Bazar-(C.G.)

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF

CRIMINAL PROCEDURE, 1973

HIGH COURT OF CHHATTISGARH: BILASPUR

Criminal Appeal No.435 of 2012

Appellants (In jail)

Samaru and others

Versus

Respondent

State of Chhattisgarh

Criminal Appeal No.829 of 2012

Appellant (In jail)

Uttam

Versus

Respondent

State of Chhattisgarh

[Single Bench: Hon'ble Shri Manindra Mohan Shrivastava, J.]
[Criminal Appeal under Section 374(2) OF Cr.P.C.]

Present:-

Shri C. R. Sahu, counsel for the appellants.

Shri Sameer Behar, Panel Lawyer for the State.

ORAL JUDGMENT
(26-02-2015)

These two appeals are being disposed off by common order as both appeals arise out of judgment of conviction and order of sentence dated 30-04-2012 passed by the 2nd Additional District Judge, Baloda Bazar in Sessions Trial No.13/2012 whereby the appellants in two aforesaid appeals have been held guilty of commission of offence and sentenced as described below:-

<u>CONVICTION</u>	<u>SENTENCE</u>
307 of IPC	R.I. for 5 years and fine of Rs.1,000/- to each of the appellants, in default of payment of fine, additional R.I. for 6 months
323/34 of IPC	S.I. for 3 months and fine of Rs.200/- to each of the appellants, in default of payment of fine, additional S.I. for 15 days

2. As per the prosecution story, daughter of Jogi, PW-1 was missing and it was suspected that Motku, brother of appellant No.1-

Samaru had kidnapped the girl. In search of missing girl, it is said that Jogi, PW-1, father of Jogi-Ganesh, PW-2 reached village Giwramalda and they returned back to their village and went to the house of Munna, who is another son of Ganesh. It is alleged that the appellants arrived there, armed with weapons and annoyed by searches being made out, assaulted Jogi, PW-1, Ganesh, PW-2, Phool Bai, PW-4, Mangali Bai, PW-6 and Munna. The incident was reported in the police, upon which, FIR was registered on 06-07-2010 at 10.30 P.M. against the appellants for commission of offence under Section 307, 294, 506-B, 323 read with Section 34 of IPC. All the injured persons were sent for medical examination. Dr. N. Prakash Aditya, PW-3 examined and gave injury report in respect of injured persons namely Jogi in Ex.P-2, Ganesh in Ex.P-3, Phool Bai in Ex.P-4, Munna in Ex.P-5 and Mangali Bai in Ex.P-6. During investigation, the weapon, alleged to be used, was seized from the possession of the appellants and after completion of usual investigation, charge sheet was filed. Learned trial Court, on the basis of the material contained in the charge sheet, framed charges against the appellants for commission of offence under Section 307, 294, 323, 506-B read with Section 34 of IPC on 29-10-2010. The appellants abjured guilt and they were put to trial. Learned trial Court mainly relying upon the evidence of the injured witnesses and proof of injury, held the appellants guilty of commission of offence and ordered sentence as described above.

3. Learned counsel for the appellants argued that the facts and circumstances as established from the evidence of the prosecution did not make out a case of commission of offence under Section 307 of

IPC. He submits that in fact, the circumstances proved that the injured persons were aggressors and they had come in connection with search of daughter of Jogi, PW-1 in Village Giwramalda, where the appellants reside. It is next contended that the prosecution story has been exaggerated and there were simple injuries which may have been caused to the victims/injured while the appellants were defending themselves against assault by Ganesh and Jogi. Further submission of learned counsel for the appellants is that there is a single incised wound found on the left parietal part of Ganesh, which too is not grievous but simple in nature. Except this, all other injuries found on the body of Ganesh, Jogi, Munna, Mangali Bai and Phool Bai are simple in nature, being contusion and tenderness. Neither any severe injury which could be caused by an axe nor any axe has been recovered from the appellant-Laxman, therefore, the allegation that Laxman assaulted with axe is false and concocted. Further submission is that from the incident of quarrel and the background, in which, the dispute arose, no common intention could be gathered against the appellants and the appellants can be held liable only for their individual act and not for any other overt act of other accused. It is lastly submitted that the appellants-Samaru and Laxman are in jail and by now, they have already undergone jail sentence for 2 year and 11 months whereas other appellants-Tap Singh remained in jail for 3 months and Uttam for 6 months. The allegation of using sharp aged weapon is only against Samaru and Laxman and considering these circumstances of the case and nature of injuries found on the injured persons, conviction of the appellants-Tap Singh and Uttam may be

altered to conviction under Section 323 of IPC and sentence, for which, they have already undergone.

4. On the other hand, learned State counsel supported the impugned judgment of conviction and order of sentence and argued that all the appellants, armed with weapons, entered the house of Munna S/o Ganesh expressing annoyance over enquiry being made by Ganesh and Jogi with regard to missing daughter of Jogi and thereafter, they opened assault on Jogi, Ganesh, Munna and two other members of the family, namely Phool Bai and Mangali Bai, in the house of Munna. Ganesh sustained as many as 6 injuries and all the other injured persons sustained one injury. Therefore, the circumstances proved that the appellants had come to the house of Munna, armed with weapons, with common intention to cause death of the injured. He further submits that irrespective of nature and extent of injury, circumstances prove the intention, therefore, conviction under Section 307 of IPC can be sustained.

5. FIR in Ex.P-1 has been proved by the evidence of Jogi, PW-1 and also by the evidence of Investigating Officer, U. R. Sahu, PW-7. Jogi Ram, PW-1 has stated in his evidence that soon after the incident, he went to police station to lodge report which was written as per his information and has stated regarding affixation of his thumb impression in his FIR. Investigating Officer, U. R. Sahu, PW-7 has stated that on the report of Jogi in the police station on 06-07-2010, he has recorded FIR in Ex.P-1 and has proved his signature.

In the FIR, it has been stated that the appellants entered the house of Munna and assaulted Munna, Ganesh, Jogi Ram, Phool Bai

and Mangali Bai. It has been alleged that the appellants were holding sharp edged weapon and clubs.

6. Jogi, PW-1 has stated in his evidence that in connection with search of his daughter, he had gone to Village Givramalda along with his father-Ganesh, PW-2. Thereafter, they returned to village Tundari and at about 7 PM in the evening, in the house of his brother-Munna, the appellant-Samaru came and asked as to why they had gone to his village for search of the girl and at that time, all the appellants were present and they assaulted him on his back, shoulder and leg. He has stated that his father was also assaulted by Samaru with the help of sharp edged weapon used for cutting animals and that injury was given on the head and legs. He has stated that his wife-Phool Bai and mother Mangali Bai and his brother-Munna were also assaulted. This witness has been subjected to detailed cross-examination and nothing could be elicited to disbelieve the testimony with regard to assault by the appellants.

7. Ganesh, PW-2 ^{सत्यमेव जयते} has also stated regarding assault by the appellants on his son Jogi Ram, Phool Bai, Mangali Bai and Munna. He has stated that Samaru was holding Gatta (used for cutting grass) and assaulted on his head and leg resulting in cut injury. He has further stated that Jogi Ram and Phool Bai, Munna and Mangali Bai were assaulted by club. According to this witness, appellant-Laxman was holding an axe in his hand with which he assaulted on his head. He has further stated that Samaru had also assaulted on his head and hand. He is an injured witness.

8. Phool Bai, PW-4 has also stated regarding the incident in similar manner as stated by other witness, Jogi Ram, Ganesh. She also sustained injuries. Mangali Bai, PW-6 has also supported the evidence of other witness regarding involvement of four appellants and assault being given by them to all the injured persons. Specific allegations have been made against the appellant-Samaru by stating that he assaulted her husband-Ganesh by Gatta (sharp edged cutting weapon). She has also stated that the appellant-Laxman assaulted her husband-Ganesh on head and legs with the help of axe and she was also assaulted. She also stated regarding the assault by club given by Uttam and Tap Singh to Jogi Ram.

9. The injuries sustained by Jogi Ram, Ganesh, Munna, Mangali Bai and Phool bai have been proved by Dr. N. Prakash Aditya, PW-3, who had examined the injuries and prepared MLC in Ex.P-2 of Jogi Ram, Ex.P-3 of Ganesh, Ex.P-4 of Phool Bai, Ex.P-5 of Munna and Ex.P-6 of Mangali Bai. While injury found on the body of Jogi Ram, Mangali Bai, Munna and Phool Bai were contusions and tenderness caused by hard and blunt object, there were 6 injuries found on the body of Ganesh, out of which, one incised wound on the anterior part of upper 1/3rd of right forearm. All other injuries were contusion and tenderness stated to be caused by hard and blunt object. In report, Ex.P-3, incised wound found in the right forearm of Ganesh was stated to be grievous in nature. Dr. N. Prakash Aditya, PW-3 stated that the injury No.1 found on the body of Ganesh was grievous in nature. In para 8 of his evidence, he has stated that in respect of two queries, he had not given any report with regard to query as to

whether in the absence of treatment, death was likely to be caused and only admits the suggestion given on the leading question put to him by the prosecution that if Ganesh Ram would not have been treated for his injuries, death was likely to be caused. The aforesaid evidence renders the prosecution story of injury No.1 found on the body of Ganesh as grievous, doubtful. This is more so when Ganesh Ram himself has admitted that he remained hospitalized for one day. Neither in the injury report nor in his evidence before the Court, Dr. N. Prakash Aditya, PW-3 has described the injury No.1, caused in the forearm of Ganesh, either as bone deep or of such a nature which was likely to endanger life. The doctor has not disclosed as to on what basis, he has admitted the suggestion of the prosecution that in the absence of treatment, death of Ganesh was likely to be caused, the injury No.1 i.e. incised injury being only in the forearm. It was not deep injury much less causing any damage to the bones. There is no clear evidence that the injury by itself was of such a nature that in the absence of treatment, Ganesh Ram would have died. As there is no material to come to the conclusion that injury was such as to endanger life, it cannot be said to be grievous injury as defined under Section 320 of IPC.

10. There is one contusion found on the occipital part of head of Ganesh Ram and this injury is simple in nature.

All other injuries sustained by the injured in the present case are simple in nature and proved to be either lacerated wound or tenderness on various parts of the body and the prosecution has failed to prove that such injuries were caused on the vital part of the body of injured other than Ganesh so as to infer that the appellant



shared common intention to cause death of Ganesh or any other person.

11. The evidence of Jogi Ram, PW-1, Ganesh, PW-2, Phool Bai, PW-4 and Mangali Bai, PW-6 that Samaru assaulted Ganesh on his head with *gatta* (sharp aged cutting tool used for reaping grass (crop)) are not supported from medical evidence, as there is no incised wound found on the head. Similarly, the evidence that Laxman had assaulted Ganesh on his head by an axe, is also not supported from medical evidence. In fact, there is one single lacerated wound found on the right occipital part of head of Ganesh and for reasons described hereinabove, the injury was not proved to be grievous in nature.

Had there been any intention to murder Ganesh, the overt act would have reflected incised wound on the vital parts of Ganesh or other injured persons. As has been discussed hereinabove, there is single incised wound caused on the forearm of Ganesh which could be caused by *Gatta* alleged to be held and used by Samaru.

Considering that ^{सत्यमेव जयते} out of six injuries found on the body of Ganesh, there was only one incised wound on the forearm which could be attributed to assault by *Gatta*, it is difficult for this Court to hold that Samaru either individually or all the appellants shared common intention to cause death of Ganesh or other injured persons.

12. In the case of *Hari Singh vs. Sukhbir Singh and Others*¹, the Supreme Court held that while examining whether a case of commission of offence under Section 307 IPC is made out, the Court is required to see, whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances

¹ (1988) 4 SCC 551

mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under Section 307, the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner, in which, it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. The state of mind of the accused has to be established from surrounding circumstances and the motive would be relevant circumstance. Where the evidence is not sufficient to establish with certainty, existence of all requisite intention or knowledge of the accused, there can be no conviction under Section 307 IPC.

13. As an upshot of above discussion, the conviction of the appellants under Section 307 of IPC is held unsustainable in law. Considering that use of sharp edged cutting tool by Samaru has been proved, Samaru is liable to be convicted for commission of offence under Section 324 of IPC. As there is no incised wound found on the head of Ganesh, alleged to have given caused by Laxman nor any axe recovered from the possession of Laxman and all other appellants have been assaulted with club and simple nature of injuries found, they are convicted under Section 323 of IPC. The appellant-Samaru is convicted under Section 324 of IPC and sentence for the period already undergone by him. Appellants-Laxman, Tap Singh and Uttam

are convicted for commission of offence under Section 323 of IPC read with Section 34 of IPC and sentenced to undergo for the period already undergone by them. The appeals are accordingly allowed to the manner and extent indicated above. Appellants-Tap Singh and Uttam are on bail, their bail bonds stand discharged. Appellants-Samaru and Laxman shall be released forthwith.

Sd/-
Manindra Mohan Shrivastava
Judge



सत्यमेव जयते